



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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April 4, 2003

TO: EMPLOYER AND UNION REPRESENTATIVES

FROM: MARK S. DOWNING, RULES COORDINATOR

RE: CLIENTELE INPUT MEETING AND RULE ADOPTION HEARING

On January 6, 2003, the Public Employment Relations Commission (Commission) adopted permanent rule amendments to Chapters 391-08, -25, -35, -45, -55, -65, and -95 WAC. The amendments implemented statutory changes in Chapters 41.06 and 41.80 RCW for state civil service employees [Personnel System Reform Act of 2002 (PSRA)], Chapter 41.76 RCW [faculty at public four-year institutions of higher education], and Chapter 41.56 RCW [home health care workers under I-775, and teaching and research assistants at University of Washington].

The Commission adopted WAC 391-25-426 as an emergency rule on January 6th providing for the merger of two or more bargaining units of state civil service employees represented by the same union. As an emergency rule only remains in effect for 120 days, the Commission has begun another rule adoption process.

Two events have been scheduled concerning the rule adoption process:

1. A clientele input meeting will be held to receive input from clientele:

Wednesday, April 16, 2003, at 1:00 p.m.
Second Floor Conference Room
Evergreen Plaza Building, 711 Capitol Way
Olympia, Washington

2. The Commission will hold a rule adoption hearing:

Tuesday, May 13, 2003, at 10:00 a.m.
Second Floor Conference Room
Evergreen Plaza Building, 711 Capitol Way
Olympia, Washington



Two documents have been filed with the Code Reviser's Office in conjunction with the rule adoption process. On January 14, 2003, the Commission filed a CR-101 form [Preproposal Statement of Inquiry] announcing the dates for the clientele input meeting and rule adoption hearing. On March 19, 2003, the Commission filed a CR-102 form [Proposed Rule Making] containing the actual wording of proposed rule amendments. These rule documents are available on the PERC web site: www.perc.wa.gov under the heading of "Rules Development", "2003 Rule Changes". The proposed rule amendments involve the following rules:

1) WAC 391-08-670 Decision numbering--Citation of cases--Indexing of decisions.
Section 4 is amended to read as follows:

To satisfy the requirements of RCW 42.17.260(5), the agency publishes its decisions, together with a search engine, on its website at: "www.perc.wa.gov".

This amendment reflects a new agency procedure for publication of decisions. Clientele can now use the PERC website to research all decisions issued since the agency was created in 1976.

2) WAC 391-25-210 Bargaining unit configurations.

Section 2 is amended to clarify current PERC practice that a union filing a motion for intervention in a representation case under WAC 391-25-190 [a union other than the incumbent with a 10% showing of interest] shall not be permitted to seek a bargaining unit configuration different than the unit proposed by the original petitioner.

A new section 3 is proposed to provide for consolidation of two or more cross-petitions [each with a 30% showing of interest] pending at the same time seeking different bargaining unit configurations for the same group of employees. Section 3 would read as follows:

(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.

Consolidation of pending petitions will allow the Commission to fulfill its statutory duty to determine the appropriate bargaining units(s). With adoption of these proposed changes, the Commission will repeal WAC 391-25-216, a special rule which currently makes WAC 391-25-210 inapplicable to state civil service employees.

3) WAC 391-25-426 Special provision--State civil service employees.

The language adopted by the Commission on January 6, 2003 lacked procedural details. The Commission staff is proposing more detailed language to effect the same purpose:

WAC 391-25-426 Special provision--State civil service employees. An employee organization that represents two or more bargaining units of state civil service employees may obtain a merger of those units by filing a petition under WAC 391-25-420(2)(a). If the merged unit is found to be appropriate under WAC 391-25-420(2)(c)(i) and (ii), the employee organization shall be certified as exclusive bargaining representative without need for unit determination elections.

Under this procedure, a union desiring to merge bargaining units would file a representation petition. By omission of reference to WAC 391-25-420(2)(b), the union would not be required to provide a showing of interest from employees indicating support for the merger. If the propriety of the merged unit proposed by the union is disputed the executive director of PERC would, following a hearing under WAC 391-25-420(2)(c)(i), determine whether the merged unit is an appropriate unit under Chapter 41.80 RCW. If found to be appropriate, a certification would issue for the merged unit without the need for a unit determination election. If the propriety of the merged unit is stipulated by the employer and union the executive director would under WAC 391-25-420(2)(c)(ii), determine whether the merged unit is, on its face, an appropriate unit under Chapter 41.80 RCW. If so, a certification would issue for the merged unit without the need for a unit determination election.

4) WAC 391-25-011 Special provision--Optional coverage of classified employees of institutions of higher education under chapter 41.56 RCW.

This rule currently implements the provisions of RCW 41.56.201 through a two-stage process: 1) The employer and union file a notice of intent indicating their desire to be governed by Chapter 41.56 RCW, subject to the mutual adoption of a collective bargaining agreement; and 2) The parties provide notice that they have executed an initial collective bargaining agreement. The transfer of jurisdiction from Chapter 41.06 RCW to Chapter 41.56 RCW is effective on the first day of the month following the month during which the parties provide this second notice.

The Commission is proposing repeal of the rule effective July 1, 2003, as required by the PSRA. At the May 13, 2003 rule adoption hearing, Commission staff will also be proposing amendments to WAC 391-25-011 on an emergency basis. The following amendments are necessary to implement the PSRA requirement that the option be exercised "prior to July 1, 2003":

Under the language in RCW 41.56.201(1)(c) making exercise of the option effective only on "the first day of the month following the month" during which a specified notice is provided to the commission, that notice must be filed on or before May 31, 2003 to effectively exercise the option.

Under this amendment, the second notice would have to be filed with the Commission on or before May 31, 2003 to effectively exercise the option under RCW 41.56.201.

The Commission will consider adoption of these proposed rule amendments at its May 13th hearing. Written comments may be submitted by May 6, 2003 to: info@perc.wa.gov If you have any questions on the rule adoption process, please call me at (360) 570-7305.